

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PLAINTIFF'S COMPLAINT

Plaintiff, ERIKA KESSLER (“Plaintiff”), through her attorney, Agruss Law Firm, LLC, alleges the following against Defendant, NAVIENT SOLUTIONS *f/k/a* SALLIE MAE, INC., (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act., 47 U.S.C. 227, et seq. ("TCPA").
2. The TCPA was designed to prevent calls and text messages like the ones described herein, and to protect the privacy of citizens like Plaintiffs. "Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how corporate similar entities may contact them, and made specific findings that "[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are

costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub. L. No. 102–243, § 11. In support of this, Congress found that

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.
5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction because this case arises out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

7. Venue and personal jurisdiction in this District are proper because Defendant does or transacts business within this District, and a material portion of the events at issue occurred in this District.

PARTIES

8. Plaintiff is, and at all times mentioned herein, was a citizen and resident of Detroit, Wayne County, Michigan.

9. Plaintiff is, and at all times mentioned herein, a “person” as defined by 47 U.S.C. § 153 (10).

10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein, was a corporation whose corporate headquarters are in Wilmington, Delaware.

11. Defendant is, and at all times mentioned herein, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10).

12. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of Michigan and in the County of Wayne, and within this judicial district.

FACTUAL ALLEGATIONS

13. Within four (4) years of Plaintiff filing this Complaint, Defendant communicated with Plaintiff regarding one of Defendant’s student loan accounts (“Account”).

14. Within four (4) years of Plaintiff filing this Complaint, Defendant began to utilize Plaintiff’s cellular telephone number, ending in 2661, to place virtually daily incessant calls to Plaintiff pertaining to an Account.

15. Within four (4) years of Plaintiff filing this Complaint, Defendant has called Plaintiff on her cellular telephone with pre-recorded messages.

16. Defendant calls Plaintiff at an annoying and harassing rate, calling Plaintiff multiple times per day.
17. Within four (4) years of Plaintiff filing this Complaint, Plaintiff requested Defendant stop calling her.
18. Despite this, Defendant continues to place repeated calls to Plaintiff, on her cellular telephone, using an “automated telephone dialing system.”
19. Defendant uses an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1), to place its repeated calls to Plaintiff.
20. Defendant’s calls constitute calls that are not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).
21. Defendant’s calls are placed to a telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).
22. Plaintiff is not a customer of Defendant’s services, and has never provided her cellular telephone number to Defendant for any purpose whatsoever.
23. Accordingly, Defendant never received Plaintiff’s “prior express consent” to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. 227(b)(1)(A).
24. Even if Defendant received Plaintiff’s “prior express consent” to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice, “prior express consent” was revoked when Plaintiff requested Defendant stop calling her.

**DEFENDANT VIOLATED THE
TELEPHONE CONSUMER PROTECTION ACT**

25. Defendant’s conduct violated the TCPA by:
 - a. Placing non-emergency telephone calls to Plaintiff’s cellular telephone using an

automatic telephone dialing system and/or pre-recorded or artificial voice in violation of 47 U.S.C. § 227 (b)(1)(A)(iii).

WHEREFORE, Plaintiff, ERIKA KESSLER, respectfully requests judgment be entered against Defendant, NAVIENT SOLUTIONS *f/k/a* SALLIE MAE, INC., for the following:

26. As a result of Defendant's negligent violations of 47 U.S.C. 227(b)(1), Plaintiff is entitled to and requests \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
27. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. 227(b)(1), Plaintiff is entitled to and requests treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B) and 47 U.S.C. 227(b)(3)(C).
28. Plaintiff is entitled to and seek injunctive relief prohibiting such conduct in the future.
29. Any other relief that this Honorable Court deems appropriate.

DATED: August 4, 2015

RESPECTFULLY SUBMITTED,

By: /s/ Michael S. Agruss (Ill. Bar Number: 6281600)

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